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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.           | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------------|------------------|
| 09/846,025  | 04/30/2001  | Philip M. Ginsberg   | 00-1020                       | 4295             |
| 63710 7590 12/06/2010<br>INNOVATION DIVISION<br>CANTOR FITZGERALD, L.P.<br>110 EAST 59TH STREET (6TH FLOOR)<br>NEW YORK, NY 10022 |             |                      | EXAMINER<br>COBURN, CORBETT B |                  |
|   |             |                      | ART UNIT                      | PAPER NUMBER     |
|   |             |                      | 3714                          |                  |
|   |             |                      | MAIL DATE                     | DELIVERY MODE    |
|   |             |                      | 12/06/2010 PAPER              |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## DETAILED ACTION

### *Election/Restrictions*

1. Newly submitted claims 11, 13, 15 & 56-65 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:
2. The previous claims were directed to a method, while the current claims are directed to an apparatus for carrying out a different method. Had both sets of claims been in the original application, a restriction would have been proper.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 11, 13, 15 & 56-65 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

3. If Applicant had amended the claims to recite an apparatus for performing the same method as originally claimed, Examiner would not have called it an election by original presentation -- even though a restriction would technically have been possible. However, since Applicant has claimed an apparatus for implementing a materially different method, Examiner is justified in making such a requirement.

4. Since there are no claims left in the case, the amendment is considered to be improper.
5. The reply filed on 24 March 2010 is not fully responsive to the prior Office Action because of the following omission(s) or matter(s): See above. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to

supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corbett B. Coburn whose telephone number is (571) 272-4447. The examiner can normally be reached on 8-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David L. Lewis can be reached on (571) 272-7673. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Corbett B. Coburn/  
Primary Examiner  
Art Unit 3714